District Judge to conclude that there was no evidence that would support the convictions of the appellant. I am not satisfied that that evidence nullifies the convictions. At best it is the kind of evidence the appellant would have given had he claimed trial to the charges in the Magistrate's Court. It would then be for the Magistrate, on an examination of the whole of the evidence, to come to a decision. Such evidence will not be before a court hearing an action for recovery of possession, under section 15(1)(h) of the Act. This is another reason why, on the facts too, it would be wrong to look behind the convictions of the appellant.

For all these reasons, I hold that the appellant had, at the close of his case, made out a *prima facie* case, which, in the event, the respondent not having given evidence, entitles the appellant to judgment. There will be order for possession as claimed. The appeal is allowed with costs here and below.

Appeal allowed.

Solicitors: *Lee & Lee; Mak, Pala, Selvadurai & Tan.*

DAUD BIN SALLEH v. THE SUPERINTENDENT, SEMBAWANG DRUG REHABILITATION CENTRE

[O.C.J. (Choor Singh J.) October 27, 1980]

[Singapore — Originating Motion No. 47 of 1980]

Practice and Procedure — Application for Habeas Corpus — Detention of drug addict — Exercise of discretion by Director of Central Narcotics Bureau — Whether power had been exercised mala fide — Scope of Misuse of Drugs Act, 1973, s. 33(1) & (2).

Misuse of Drugs — Discretionary powers of Director — Whether power had been exercised mala fide — Scope of s. 33(1) & (2) of Misuse of Drugs Act, 1973.

The appellant in this case, a gardener, lived with his father. On May 27, 1980 he was arrested by officers from the Central Narcotics Bureau (hereinafter referred to as CNB). He was taken to Joo Chiat Police Station where he was detained in a lock-up. The next day he was taken to CNB and from there to the Sembawang Drug Rehabilitation Centre where he was detained and given the "cold turkey" treatment. He was seen by a doctor on the next two consecutive days but at no time was any sample of his urine taken for analysis. Later he was informed that he would be detained for three years.

The applicant contended that he had been unlawfully detained. He applied for a writ of *Habeas Corpus.*

Held, allowing the application: (1) when a person who has been deprived of his liberty challenges the detention by a petition for *habeas corpus,* it is for the authority who has detained him to show that the person has been detained in exercise of a valid legal power. Once it is shown, it is for the *détenu* to show that the power has been exercised *mala fide;*

(2) the court cannot undertake an investigation as to the sufficiency of the material which made the Director to "reasonably suspect" the applicant. Once the Director makes an order requiring a person, whom he reasonably suspects to be a drug addict, to be medically examined, the only question left is whether the Director has exercised his power under section 33(1) of the Misuse of Drugs Act, 1973 in good faith; in the present case there was no allegation of bad faith on the part of the Director;

(3) the power granted to the Director under section 33(2) of the Misuse of Drugs Act, 1973 to require a person to be admitted to an approved institution for treatment or rehabilitation is subjective of his satisfaction which must be based on the evidence prescribed by the statute;

(4) before the Director can exercise his power under the aforesaid section 33(2) the person suspected to be a drug addict must be medically examined or observed or subjected to a urine test;

(5) when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another. An authority entrusted with a discretion must not in the purported exercise of its discretion, act under the dictation of another body or person;

(6) the role of the court is limited to ensuring that the Director's discretion has been exercised according to law. But where, as in the present case the applicant had satisfied the court that the Director did not have before him any factual evidence on which he could have made up his own mind whether or not the applicant was a person who required treatment at an approved institution, the order made by the Director could not be sustained and must be set aside.

Case referred to:-

(1) *R.* v. *Halliday, Exp. Zadig* [1917] A.C. 260, 269.

ORIGINATING MOTION.

J.B. Jeyaretnam for the applicant.

Sowaran Singh (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Choor Singh J.: This is an application by Daud bin Salleh, for a writ of *habeas corpus.*

The affidavit filed by the applicant states that he is a Singapore citizen; that before his arrest he was staying with his father at No. 20-H, Lorong Engku Aman, Singapore and that he was employed as a gardener by the Housing and Development Board.

The facts according to the applicant are that he was arrested by officers from the Central Narcotics Bureau on the afternoon of May 27, 1980. He was taken to Joo Chiat Police Station where he was detained in a lock-up. The following day he was taken to the Central Narcotics Bureau at Pearl's Hill and from there to the Sembawang Drug Rehabilitation Centre where he was detained and given the "cold turkey" treatment. He was seen by a doctor on the next two consecutive days but at no time was any sample of his urine taken for analysis. Later he was informed that he would be detained for three years.

The applicant contended that he had been unlawfully detained. When a person who has been deprived of his liberty challenges the detention by a petition for *habeas corpus,* it is for the authority who has detained him to show that the person has been detained in exercise of a valid legal power. Once that is shown, it is for the détenu to show that the power has been exercised *mala fide* or improperly.

Counsel for the respondent relies on the provisions of sections 33(1) and 33(2) of the Misuse of Drugs Act, 1973 which provide as follows: —

33. — (1) The Director of the Central Narcotics Bureau may require any person whom he reasonably suspects to be a drug addict to be medically examined or observed by a Government medical officer or a medical practitioner.

(2) If as a result of such examination or observation or as

a result of a urine test it appears to the Director of the Central Narcotics Bureau that it is necessary for any person to undergo treatment or rehabilitation or both at an approved institution, the Director may make an order in writing requiring that person to be admitted for such purpose to an approved institution.

It is contended on behalf of the respondent that the applicant is lawfully detained under section 33(2) of the Act.

Affidavits have been filed by Mr. Tee Tua Ba who was the Director of the Central Narcotics Bureau, Singapore, on May 22, 1980 when the applicant was sent for medical examination and by Mr. Poh Geok Ek who was the Acting Director of the said Bureau on May 26, 1980 when the order was made for the detention of the applicant at the Drug Rehabilitation Centre.

Mr. Tee Tua Ba states in his affidavit:

"...On May 21, 1980, some time between 1.30 o'clock and 3 o'clock in the afternoon, the applicant, Daud bin Salleh, was arrested by officers from Joo Chiat Police Station at a vacant plot of land off Jalan Pasir, Singapore, on suspicion of being involved in drug activities. Following his arrest and from information received I had reasonable grounds to suspect that the said Daud bin Salleh was a drug addict. In exercise of the powers conferred on me under section 33(1) of the Misuse of Drugs Act, 1973, I issued a written request on May 22, 1980, to the Government Medical Officer of the Drug Rehabilitation Centre, Sembawang, to medically examine and observe the said applicant Daud bin Salleh...."

Mr. Poh Geok Ek states in his affidavit:

"...On May 26, 1980, I received a report No. P.0625/80 from Dr. Ng Ban Cheong, the Government Medical Officer of the Drug Rehabilitation Centre, Sembawang, which was addressed to the Director of the Central Narcotics Bureau, I annex hereto the said Report which is marked as Exhibit No. 'PGE. 1.'

As a result of the findings of Dr. Ng Ban Cheong, as contained in his report which is referred to herein as Exhibit No. 'PGE. 1', it appeared to me to be necessary that the applicant, Daud bin Salleh, should undergo treatment and rehabilitation at the Drug Rehabilitation Centre, Sembawang, which is an approved institution. Accordingly, in exercise of the powers under section 33(2) of the Misuse of Drugs Act, 1973, conferred on me by section 33(2A) of the same Act, I made an Order in writing dated May 26, 1980 directing that the applicant be admitted to the Drug Rehabilitation Centre, Sembawang, to undergo treatment and rehabilitation with effect from May 26, 1980...."

The medical report on which Mr. Poh Geok Ek the Acting Director of Central Narcotics Bureau acted and made the order for the detention of the applicant at the Sembawang Drug Rehabilitation Centre reads as follows:

"The abovenamed was admitted to the Centre on May 22, 1980. He said on May 21, 1980 about 1 p.m. Joo Chiat Police arrested him at Jalan Pasir.

In the course of my examinations and observations of the subject, I found that he had definite clinical evidence of drug withdrawal syndrome consistent with heroin addicted.

In my opinion he is a heroin addict."

The order made by Mr. Poh Geok Ek, the Acting Director of the Central Narcotics Bureau, on May 26, 1980 requiring that the applicant be admitted to the Sembawang Drug Rehabilitation Centre was attacked by counsel for the applicant on two grounds. First, it was submitted that Mr. Tee Tua Ba, the Director of the Central Narcotics Bureau had no grounds at all on May 22, 1980 to require the applicant to be medically examined. It was alleged that the affidavit of Mr. Tee did not set out the evidence on which he "reasonably suspected" the applicant to be a drug addict and therefore his requirement that the applicant be medically examined was bad in law and vitiated the order made by Mr. Poh Geok Ek on May 26, 1980 requiring the applicant to be admitted to the Sembawang Drug Rehabilitation Centre.

In my judgment the condition precedent for requiring a person to be medically examined is the subjective satisfaction of the Director. Section 33(1) provides that any person whom the Director "reasonably suspects to be a drug addict" may be required to be medically examined. The Director alone has to decide whether there is a reasonable cause to suspect a person to be a drug addict. If the Director has acted in good faith, he cannot be called upon to disclose what circumstances made him to "reasonably suspect" a person to be a drug addict. It is obvious that in many cases the Director will be acting on information of the most confidential character, which could not be communicated to the person concerned or disclosed to the court without the greatest risk of prejudicing the future efforts of the Director in such cases. The question is one of detention justified by suspicion, not of criminal conviction which can only be justified by legal evidence. A court of law manifestly cannot pronounce upon suspicion. I may also quote the words of Lord Finlay L.C. in *R.* v. *Halliday, Exp. Zadig*[1]:

"It seems obvious that no tribunal for investigating the question whether circumstances of suspicion exist warranting some restraint can be imagined less appropriate than a court of law."

The court cannot undertake an investigation as to the sufficiency of the material which made the Director to "reasonably suspect" the applicant. In my judgment, once the Director makes an order requiring a person, whom he reasonably suspects to be a drug addict, to be medically examined, the only question left is whether the Director has exercised his power under section 33(1) of the Act in good faith. In this case there is no allegation of bad faith on the part of the Director. The applicant in his affidavit merely denied being a drug addict and denies that there can be any reason for the Director to "reasonably suspect" him to be a drug addict. This, in my view is clearly insufficient to discharge the onus of proving bad faith on the part of the Director.

The second ground relied upon by counsel for the applicant raises a more substantive issue. It concerns the order made by Mr. Poh Geok Ek, the Acting Director, on May 26, 1980 requiring the applicant to be admitted to the Sembawang Drug Rehabilitation Centre, in short, the detention order. It is submitted that under section 33(2) of the Act, it must be made to "appear to the Director" that it is necessary for a person to undergo treatment or rehabilitation; that in this case the Director acted on the bare opinion of the medical officer; that there was no factual evidence before the Director on which it could "appear to him" that the applicant should undergo treatment and that the order was therefore improperly made.

In my view, the power granted to the Director under section 33(2) of the Act to require a person to

be admitted to an approved institution for treatment or rehabilitation is subjective of his satisfaction which must be based on the evidence prescribed by the statute. The competence of the Director to make a detention order is plainly subject to a condition precedent. Before the Director can exercise his power under section 33(2) of the Act the person suspected to be a drug addict must be medically examined or observed or subjected to a urine test. The Director must make his decision on factual evidence gathered in the medical examination, or by observation or disclosed by the urine test. In this case no urine test was made. The Director acted on the report of the medical officer. The report did not set out factual evidence or any clinical evidence on which the Director could form his own opinion as to whether or not the applicant was a drug addict. The medical report on which the Director acted merely stated that the applicant was, in the opinion of the medical officer, a drug addict. It follows that the Director acted on the bare opinion of the medical officer. The Director could hardly be satisfied on his own, if he did not have the requisite material before him on which he could exercise his personal judgment before making the order of May 26, 1980.

It was submitted on behalf of the respondent that the Director is not medically qualified and is therefore not in a position to appreciate clinical evidence and form a judgment on it and that he is entitled to act on the opinion of the medical officer.

It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another. An authority entrusted with a discretion must not in the purported exercise of its discretion, act under the dictation of another body or person. The Director has a right to decline to follow any advice and reject any opinion offered or expressed by a medical officer in his report. An order under section 33(2) of the Act drastically affects the liberty of the person and must be made on the personal judgment of the Director in whom is vested the power to make such orders.

The legislature has vested the power of detention in the Director and before he can exercise it, it must be made to appear to him on relevant factual evidence that it is necessary for the person medically examined to undergo treatment at an approved institution. The existence of factual evidence is a condition precedent for the making of the order. There must be material before him on which the Director can form an independent opinion. When an order made by the Director under section 33(2) of the Act is challenged, the Director should be able to produce for the court's scrutiny the material on which he formed his personal judgment before making the impugned order. The courts cannot and must not shirk to assert their power, which they undoubtedly have, to scrutinise the factual bases upon which the Director has exercised his discretionary power under section 33(2) of the Act.

The applicant has in this case obtained and filed an affidavit by Dr. Gwee Ah Leng, the former Senior Physician of the Singapore General Hospital in which Dr. Gwee states that the medical report relied upon by the Director "does not disclose that the applicant is a drug addict". This is not quite correct. The medical report does state and therefore does disclose that in the opinion of the medical officer, the applicant is a drug addict. What Dr. Gwee probably meant is that the medical report in question does not set out any clinical evidence on which a finding can be made that the applicant is a drug addict. If this is what he meant, then I agree with him entirely.

Where there is the requisite evidence before the Director, it is not for this court to say whether such evidence is adequate or sufficient for an order under section 33(2) of the Act. It is not for the court to question whether the factual evidence placed before the Director is sufficient or not for the subjective satisfaction of the Director or whether the subjective decision is right or not. The role of the court is limited to ensuring that the Director's discretion has been exercised according to law. But where, as in this case, the applicant satisfies the court that the Director did not have before him any factual evidence on which he could have made up his own mind, the order made by the Director cannot be sustained and must be set aside.

A medical officer required to carry out an examination or observation on a suspected drug addict is of course entitled to express his opinion whether or not the person is a drug addict, but before he does so he must set out his factual or clinical findings on which he bases his opinion. If his opinion is based entirely on observations, then he must set out in his report what he observed. If he observed "withdrawal symptoms" then he must set out in his report what those symptoms were which he classifies as "withdrawal symptoms". If a full medical report prepared along these lines is placed before the Director and it appears to him from such a report that the person examined or observed should undergo treatment or rehabilitation at an approved institution, the Director will be acting well within his powers in making a detention order under section 33(2) of the Act.

In my judgment there was no material in this case before the Director on which he could make up his own mind whether or not the applicant was a person who required treatment at an approved institution. I hold accordingly that the order made by the Acting Director on May 26, 1980 was improperly made. In the result the application succeeds. *Habeas corpus* is allowed.

It may be said that this application has been allowed on a mere technicality. That is not so. The liberty of the subject is involved and legislation affecting a person's liberty must be strictly construed and strictly complied with. There must not be any relaxation of the vigilance of the court in seeing that the law is duly observed especially in a matter so fundamental as the liberty of the subject.

Application allowed.

Solicitors: *J.B. Jeyaretnam & Co.*